



ACHPR

African Commission on
Human and Peoples' Rights

Human Rights our
Collective Responsibility

INTER-SESSION ACTIVITY REPORT

OF

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African Commission on Human and Peoples' Rights**

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INTRODUCTION

1. This report is presented in accordance with Rules 25(3) and 64 of the Rules of Procedure (2020) of the African Commission on Human and Peoples' Rights (the Commission), and covers activities carried out during the intersession period between November 2023 to May 2024.
2. The Report is structured in five parts.
 - **Part I: Activities undertaken as:**
 - **A member of the Commission.**
 - **A member of the Working Group on the Working Group on the Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa (the Working Group on the Death Penalty).**
 - **Part II: Activities undertaken as the Special Rapporteur on Freedom of Expression and Access to Information in Africa.**
 - **Part III: Report on interventions issued in response reports of human rights violations.**
 - **Part IV: The 20th anniversary of the special mechanism on Freedom of Expression and Access to Information in Africa.**
 - **Part V: Conclusion.**

Part I:

Activities undertaken as a Member of the Commission

➤ *Promotion mission to the Kingdom of Lesotho*

3. From **29 January** to **02 February 2024**, in my capacity as the Commissioner Rapporteur on the human rights situation in Lesotho, I led the Promotion Mission to the Kingdom of Lesotho (Lesotho), accompanied by Commissioner Dr. Litha Musyimi-Ogana.
4. During the Mission, the Commission's delegation met with various stakeholders in Government, the media, CSOs, as well as other actors involved in the promotion and protection of human rights in Lesotho, in addition to visiting Maseru Correctional Institution and the Faculty of Law in the National University of Lesotho.
5. I would like to take this opportunity to thank the Government of the Kingdom of Lesotho for the warm reception and hospitality, as well as for the frank and constructive dialogue during the Mission, which enabled the delegation to have a fairly representative view of the human rights situation in the country. A Report of the Mission will be considered and adopted by the Commission in due course.

➤ *Participation in the 78th Ordinary Private Session*

6. From **23 February** to **08 March 2024**, I participated in the Commission's 78th Ordinary Private Session, held virtually, which focused on the following: consideration of Communications, Reports of Missions, Resolutions, Concluding Observations, Studies and other Reports, position papers, the Chairperson's Intersession Report and Report of the Secretary to the Commission, among others.

Activities undertaken as a member of the Working Group on the Death Penalty

7. During the period under consideration I did not participate in any activities as a member of the Working Group on the Death Penalty.

Part II: Activities undertaken as the Special Rapporteur on Freedom of Expression and Access to Information in Africa

8. The following are the activities which were undertaken in my capacity as the Special Rapporteur on Freedom of Expression and Access to Information in Africa (the Special Rapporteur).

➤ *Evaluation of OHCHR Programme of Media Freedom and the Safety of journalists*

9. On **05 February 2024**, I participated in an interview which focused on evaluating the OHCHR's program on 'the Global Drive for Media Freedom and the Safety of Journalists,' during which I provided perspectives from the Commission and the special mechanism on the issues of media freedom and the safety of journalists. In addition, I proposed a number of recommendations, including calling for enhanced collaboration between the OHCHR and the Commission's special mechanism on freedom of expression and access to information in Africa.

➤ *Participation in Digital Rights and Inclusion Forum*

10. From **23 to 25 April 2024**, I participated in the Digital Rights and Inclusion Forum (DRIF), held in Accra, Ghana. The DRIF is a platform where conversations on digital policy in Africa are held and policy directions debated. This important Forum focuses in issues related to privacy, affordable internet, increasing women's access to digital tools, health surveillance during COVID-19, internet shutdowns, among others.

11. During the meeting, I participated in the opening ceremony panel where I shared reflections on how far the Commission's mandate to promote freedom of expression has extended to date, with a focus on digital rights and Internet freedom. In addition, I gave the key note address during a panel discussion on the African Union Convention on Cyber Security and Protection of Personal Information, popularly known as the Malabo Convention. The theme of the panel was "**Malabo at 10: Reflections on the Convention vis-a-vis Human Rights in Africa 10 Years Later,**" noting the developments which have occurred since the Convention was adopted in 2014, and in view of its entry into force last year following ratification by the 15th State Party.

➤ *1st Joint Forum of the Special Mechanisms of the African Commission on Human and Peoples' Rights*

12. From **25 to 27 April 2024**, I participated in the 1st Joint Forum of the Commission's special mechanisms, in Dakar, Senegal. The Forum's theme of '*Advancing the protection and promotion of human rights in Africa: Strengthening commitments, overcoming challenges, and reinforcing opportunities*,' provided a platform to the Special Mechanisms to come together, with diverse partners of the Commission and stakeholders in the African human rights system, to showcase their work and their inter-relatedness, in addition to highlighting the cross-cutting issues/challenges, sharing insights, and developing comprehensive approaches to human rights issues which cut across different mandates.
13. The Forum focused on the following thematic issues: the status of the ratification of human rights instruments; discussions on advancing the protection and promotion of human and peoples' rights within the AU framework; in addition to an interactive dialogue on the soft laws and jurisprudence of the Commission and their impact.
 - *Collaboration on the Joint Declaration on Climate Crisis and Freedom of Expression*
14. During the inter-session period, I contributed to the development of a joint declaration, in addition to participating in a series of online meetings in collaboration with the other special mechanisms on freedom of expression, namely: The United Nations Special Rapporteur on Freedom of Opinion and Expression; the Organization for Security and Co-operation in Europe Representative on Freedom of the Media; and the Organization of American States Special Rapporteur on Freedom of Expression.
15. The outcome document from this collaboration, that is the **Joint Declaration on Climate Crisis and Freedom of Expression**, was issued on **03 May 2024** commemorating the World Press Freedom Day, and can be accessed on the following link - <https://www.osce.org/representative-on-freedom-of-media/567968>
16. In addition, I intervened virtually during the launch of the Joint Declaration, which was held in Santiago, Chile, on Friday 03 May.
 - *Experts' Validation Meeting on the Study on human and peoples' rights and Artificial Intelligence (AI), robotics and other new and emerging technologies in Africa*
17. From **02 to 03 May 2024**, I participated virtually in an Experts' Validation Meeting which was held in Nairobi, Kenya, convened by the Commission's Focal Point on

the Study on human and peoples' rights and Artificial Intelligence (AI), robotics and other new and emerging technologies in Africa, Commissioner Solomon Dersso.

18. The validation meeting was convened in furtherance of **ACHPR/Res. 473 (EXT.OS/XXXI) 2021** which identified the need to undertake a Study on human and peoples' rights and AI, robotics and other new and emerging technologies in Africa. The study is intended to contribute to the development of guidelines and norms that will address issues relating to AI technologies, robotics and other new and emerging technologies, and their impact on human rights in Africa.

Part III: Report on interventions issued in response to human rights violations

19. In line with my mandate to “make public interventions where violations of the right to freedom of expression and access to information have been brought to the mechanism’s attention, including by issuing public statements, press releases, and sending appeals to Member States asking for clarifications,” the following interventions were issued in my capacity as the Special Rapporteur.

- Letters

➤ *Joint Letter to the Republic of Senegal regarding reports of an internet shutdown in the Republic of Senegal*

20. On **12 February 2024**, a Joint Letter of Urgent Appeal issued in collaboration with the Commissioner Rapporteur responsible for the human rights situation in the Republic of the Senegal, was transmitted to His Excellency Macky Sall, President of the Republic of Senegal, in response to reports received regarding an internet shutdown in the Republic of Senegal, which started on Sunday 04 February 2024 and recurred on 13 February 2024.

21. The letter, *inter alia*, requested clarification on the reports of an internet shutdown in Senegal, reiterated the rights enshrined in the African Charter on Human and Peoples’ Rights and the Declaration of Principles on Freedom of Expression and Access to Information in Africa, in addition highlighting the importance of the internet in advancing human and peoples’ rights in Africa.

➤ *Joint Letter of Appeal regarding allegations of threats against Malawian investigative journalist Mr. Gregory Gondwe*

22. On **26 February 2024**, I participated in a joint letter of urgent appeal in collaboration with the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals and the Commissioner Rapporteur for human rights situation in the Republic of Malawi, in response to reports received regarding escalating threats against Mr. Gregory Gondwe, an investigative journalist working in Malawi.

23. In the letter, clarification was requested regarding the allegations on the threats against Mr. Gregory Gondwe, in addition to reaffirming the indispensable role of the media as the fourth estate, in particular, by taking all necessary measures to provide journalists and other media practitioners with an environment that is conducive to free expression without undue interference or fear of reprisal, from State and non-State actors.

➤ *Joint Letter of Appeal regarding internet outage in Republic of the Sudan*

24. On **28 February 2024**, I participated in a joint letter of appeal to the Republic of The Sudan, in collaboration with the country rapporteur for the Republic of The Sudan, following reports indicating that since 04 February 2024 communication services had been severed across all regions of Sudan, following disruptions by three main internet operators at the hands of the Rapid Support Forces (RSF). The letter requested clarification on the veracity of the allegations, called on the Government to conduct prompt, impartial and effective investigations into the allegations and hold the perpetrators accountable

- **Press Statements**

➤ *Press Statement on Letters of Appeal to the Republics of Senegal and the Sudan*

25. On **12 February** and **01 March 2024**, Press Statements were issued informing the general public of the Joint Letters of Urgent Appeal transmitted to the Governments of Senegal and the Sudan. These Statements can be accessed on the Commission's webpage.

➤ *Statement commemorating World Press Freedom Day 03 May 2024*

26. In commemoration of World Press Freedom Day, commemorated annually on **03 May 2024**, a Press Statement was issued on the following theme: "**A Press for the Planet: Journalism in the face of the Environmental Crisis**," which highlighted the importance of journalism and freedom of expression in the context of the current global environmental crisis.

27. The Statement can be accessed on the Commission's webpage.

<https://achpr.au.int/en/news/press-releases/2024-05-03/media-press-freedom>

Part IV: The 20th anniversary of the Special Mechanism on Freedom of Expression and Access to Information in Africa

28. As you may be aware, 2024 marks the 20th anniversary of the establishment of the special mechanism which monitors the rights of freedom of expression and access to information in Africa by the Commission. The following is a brief synopsis of the genesis of the mandate, in addition its achievements and challenges faced over the past twenty years.
29. The process of establishing the mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa began with the adoption of the **Resolution on Freedom of Expression** during the 29th Ordinary Session held in May 2001, through which the Commission established a Working Group to develop a soft law document which would elaborate on the scope and content of Article 9 of the African Charter. In addition, the Working Group was tasked with proposing an appropriate mechanism which would oversee implementation of the soft law document. A year later in October 2002, the Commission adopted the **Declaration of Principles on Freedom of Expression in Africa**.
30. Following the adoption of this Declaration, the earlier decision of the Commission to set up an appropriate mechanism to oversee the implementation of the soft law document, and by extension Article 9 of the African Charter, was implemented in the form of designation of a 'focal person' within the Commission for this purpose. In 2004, the position of 'focal person' on freedom of expression was transformed to the 'Special Rapporteur on Freedom of Expression,' to monitor adherence to freedom of expression standards, investigate violations and make appropriate recommendations to the Commission.
31. Subsequently the mechanism was expanded to include access to information, through adoption of the **Resolution on the Expansion of the Mandate and Re-appointment of the Special Rapporteur on Freedom of Expression and Access to Information in Africa**, during the 42nd Ordinary Session in November 2007.
32. In this Resolution, the Commission decided that the mandate of 'the Special Rapporteur on Freedom of Expression and Access to Information in Africa' be should to:
- Analyze national media legislation, policies and practice within Member States, monitor their compliance with freedom of expression and access to information standards in general and the Declaration of Principles on Freedom of Expression in Africa in particular, and advise Member States accordingly;

- Undertake fact-finding missions to Member States from where reports of systemic violations of the right to freedom of expression and denial of access to information have reached the attention of the Special Rapporteur and make appropriate recommendations to the African Commission;
- Undertake promotional country Missions and any other activities that would strengthen the full enjoyment of the right to freedom of expression and the promotion of access to information in Africa;
- Make public interventions where violations of the right to freedom of expression and access to information have been brought to her attention, including by issuing public statements, press releases, and sending appeals to Member States asking for clarifications;
- Keep a proper record of violations of the right to freedom of expression and denial of access to information and publish this in her reports submitted to the African Commission; and
- Submit reports at each Ordinary Session of the African Commission on the status of the enjoyment of the right to freedom of expression and access to information in Africa.

The achievements of the Special Mechanism on Freedom of Expression and Access to Information in Africa

33. The Special Rapporteur has made good progress towards protecting and promoting freedom of expression and access to information in Africa. The following is a compilation of its key achievements.

➤ *Adoption of soft law documents related to freedom of expression and access to information*

34. In accordance with Article 45(1)(b) of the African Charter, which mandates the African Commission “to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms upon which African Governments may base their legislations,” the special mechanism, in collaboration with its partners, initiated the development of a number of soft law documents in order to enhance understanding of Article 9 of the African Charter.

35. Accordingly, after a broad and participatory process, the Commission adopted the following soft law documents:

- ✓ **The Model Law on Access to Information for Africa**, adopted by the Commission during its 53rd Ordinary Session in April 2013, which provides a

detailed set of provisions embodying the international, regional or sub-regional standards on the right of access to information. The Model Law which was developed in order to facilitate the adoption of national legislation on access to information by States in Africa. Since the adoption of the Model Law, more countries have adopted Access to Information Laws. As at October 2023, twenty-seven (27) had adopted such laws, including: **Angola; Benin; Burkina Faso; Cote d'Ivoire; Ethiopia; The Gambia; Ghana; Guinea; Kenya; Liberia; Malawi; Morocco; Mozambique; Namibia; Nigeria; Niger; Rwanda; Seychelles; South Africa; South Sudan; Sierra Leone; Sudan; Tanzania; Togo; Tunisia; Uganda; and Zimbabwe.** This represents about half of the fifty-five (55) African countries.

- ✓ **The Guidelines on Access to Information and Elections in Africa**, which was adopted by the Commission during its 61st Ordinary Session in November 2017, in light of the importance of the right of access to information to the creation of a conducive environment for free, fair and transparent elections. The Guidelines were also borne from recognition of the fact that no regional standard on the role of access to information in the electoral process existed as a means of guaranteeing the credibility of elections. The Guidelines elaborate on the information which should be proactively disclosed by all the role players in the elections including: political parties; election observer missions; the media; among others.
- ✓ **The Declaration of Principles of Freedom of Expression and Access to Information in Africa** adopted by the Commission at its 65th Ordinary Session in November 2019, was adopted in order to update the principles contained in the **Declaration of Principles on Freedom of Expression** adopted by the Commission in 2002. Accordingly, the revised Declaration affirms the principles for anchoring the right to freedom of expression, expands the principles in relation to the right to access information, and includes principles related to the internet age.

36. I take this opportunity to encourage all stakeholders of the Commission, including States Parties, NHRIs, CSOs, among others, to familiarize yourselves with and make use of these soft law documents, as they have been developed to aid the promotion and protection of the rights to freedom of expression and access to information in Africa.

➤ *Letters of Urgent Appeal*

37. A crucial aspect of the special mechanism's mandate are the interventions issued in response to reports of violations of the right to freedom of expression and access to

information, which have been brought to the Special Rapporteur's attention. Usually this is in the form of Letters of Urgent Appeal, sent to the Government of the concerned State Party, where the violation is alleged to have occurred. Generally, the letters express concerns on the allegations received, call for action from the Government, in addition to urging action to ensure protection of the victims, investigation of the violations, in addition to accountability.

38. Whereas this is an effective means of intervening in situations where violations have been brought to the attention of the Special Rapporteur, it is noted that the majority of States Parties do not respond to the Letters of Appeal, which severely limits the Special Rapporteur's ability to engage further on the alleged violations.

➤ *Resolutions*

39. Another method used by the Special Rapporteur to raise awareness on freedom of expression and access to information is by proposing Resolutions for adoption during the Sessions of the Commission. During its tenure several Resolutions have been adopted which highlight specific thematic, and at times country related, issues relevant to Article 9 of the African Charter. For example, Resolutions adopted include the following: **Resolution 221 on the Attacks against Journalists and Media Practitioners in Somalia** adopted during the 51st Ordinary Session in May 2012; **Resolution 522 on the Protection of Women Against Digital Violence in Africa** adopted during the 72nd Ordinary Session in August 2022; and **Resolution 580 on Internet Shutdowns and Elections in Africa** adopted during the 78th Private Ordinary Session in March 2024.

40. These Resolutions can be accessed on the Commission's website.

➤ *Cooperation and collaboration between the global Rapporteurs on Freedom of Expression*

41. Since 2006 the Commission's special mechanism has collaborated with the other special *rapporteurs* on freedom of expression, including the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, specifically through the release of Joint Declarations in commemoration of World Press Freedom Day.

42. These declarations, issued annually, highlight various topics of concern related to freedom of expression and access to information, and propose recommendations to States.

43. A compilation of all joint statements issued by the special mechanisms can be accessed on a link indicated in this Report: <https://www.osce.org/fom/66176>

➤ *Challenges*

44. As can be observed, the Mechanism has made a lot of progress in promoting and protecting freedom of expression and access to information in Africa. However, a number of challenges have been observed over the years, which have an impact on the effective promotion and protection of these rights. The following are a number of the challenges which have been noted:

- The lack of dissemination of the soft law documents related to freedom of expression and access to information adopted by the Commission, highlighted above, by the States Parties, which has an impact on their effectiveness at the national level.
- The existence of draconian laws which have a negative effect on the rights enshrined under Article 9 of the African Charter, such as the existence of libel and defamation in the national legislation of some States Parties, despite repeated calls from the special mechanism to decriminalize such offences.
- The slow process of the enactment of access to information laws by States Parties, in some cases with bills to enshrine this right languishing in Parliament for long periods of time.
- The lack of allocation of adequate resources necessary for implementation of access to information, particularly for the effective functioning of Oversight mechanisms established to monitor and ensure protection of the right to access information.
- The proliferation of online violations of the rights enshrined in Article 9 of the African Charter, particularly targeting specific groups such as women, journalists, human rights defenders, among others.
- Increasing reports of internet and social media shutdowns, with a noticeable trend of restrictions during electoral periods.
- The persistence of attacks on journalists and other media practitioners, both online and offline, arbitrary arrest and detention, among others, in addition to the lack of accountability for violations of their rights.
- Lack of responses from State Parties to the Letters of Appeal from the Special Rapporteur, which negatively impacts effective monitoring of the situation of freedom of expression and access to information in Africa.
- The lack of comprehensive information provided on the promotion and protection of freedom of expression and access to information, in the Periodic Reports submitted by States Parties to the Commission.

- The lack of consistent submission of shadow reports from National Human Rights Institutions and NGOs on issues related to freedom of expression and access to information, which would provide crucial information not available to the special mechanism during consideration of State Periodic Reports, and formulation of recommendations thereafter.
- The lack of media diversity in some States Parties, among others.

45. This list of challenges, which have been observed by the special mechanism, is by no means exhaustive. It is imperative that concerted effort is made to address these challenges in order to ensure the effective realization of freedom of expression and access to information in Africa.

Part V: Conclusion

- 46. This Report has given a general overview of the work which has been undertaken by the mandate of the Special Rapporteur since the special mechanism was established twenty years ago. It has also highlighted the various challenges which have been faced.
- 47. Despite the various challenges which have impeded the effective realization of freedom of expression and access to information in Africa, the special mechanism has been able to achieve great strides in fulfillment of its mandate. This is in large part to the different stakeholders, at the local, national and international level, who have supported and contributed to the mechanism's mandate, projects and initiatives, over the years. Accordingly, this Report provides the opportunity to extend sincere gratitude to the tireless defenders of freedom of expression and access to information, who have worked with the special mechanism.
- 48. Equally, acknowledgment should be given to the mechanism's predecessors for the important contributions they made to the promotion and protection of the rights enshrined in Article 9 of the African Charter; including former Commissioners Andrew Chigovera, Pansy Tlakula, Lawrence Mute and Jamesina King. Due credit is given to them for the immense progress made by the mechanism during the past twenty years.
- 49. It is hoped that this anniversary will provide the opportunity to renew commitment to the promotion and protection of freedom of expression and access to information in Africa.
- 50. Thank you for your attention.
